IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Banti @ Vikki @ Sultan Vs. State of Rajasthan
(S.B. CRIMINAL APPEAL NO.6/2004)

S. B. Criminal Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 4-9-2003 in Sessions Case No.11/2003 passed by Sh. R.C.Pareek, RHJS, Woman Atrocities – Dowry Cases, Jaipur City Jaipur.

Date of Judgment: March 15, 2007.

PRESENT
HON'BLE MR. JUSTICE SHIV KUMAR SHARMA

Mr. Rajendra Singh Tanwar, for the appellant.

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT:

Challenge in this appeal is to the judgment dated September 4, 2003 of learned Judge Women Atrocities Dowry Cases Jaipur City Jaipur whereby the appellant was convicted and sentenced as under:-

U/s.376 (1) IPC:
To suffer rigorous imprisonment for seven years and fine of Rs.500/-, in default to further suffer rigorous imprisonment for one month.

U/s.366 IPC:
To suffer rigorous imprisonment for two years and fine of Rs.250/-, in default to further suffer rigorous imprisonment for twenty days.

U/s.363 IPC:
To suffer rigorous imprisonment for one year and fine of Rs.100/-, in default to further suffer rigorous imprisonment for ten days.

The substantive sentences were ordered to run concurrently.

2. It is the prosecution case that informant Sita Ram Saini submitted a written report (Ex.P-1) on August 4, 2002 at Police Station Mahesh Nagar Jaipur with the averments that his daughter Usha (fictitious name) aged 12 years was missing since August 3, 2002 at 3 PM. Thereafter on August 13, 2002 Sita Ram Saini gave written information to the effect that his daughter was kidnapped by Banti @ Sultan. On that report a case was registered and investigation commenced. Statements of witnesses under section 161 CrPC were recorded and on completion of investigation charge sheet was filed. In due course the case came up for trial before the learned Judge Women Atrocities Dowry Cases Jaipur City Jaipur. Charges under sections 363, 366 and 376 IPC were framed against the accused, who denied the charges and claimed trial. The prosecution in support of its case examined as many as 18 witnesses. In the explanation under Sec.313 CrPC, the appellant claimed innocence. Three witnesses in defence were examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellant as indicated herein above.

3. I have heard learned counsel for the parties and weighed the material on record.

4. The prosecutrix (Pw.3) in her examination in chief deposed as under:-

> "बंटी तीन बजे के करीब आया। मुझे हाथ का ईशारा करके बुलाया कहा कि ज्यूस पीकर आयेंगे। मैं उसके साथ महेश नगर मोटर साईकिल से गई। वहां मेंगो ज्यूस पीया। ज्यूस पीकर के हम दोनो अलवर बस से गये। वहां करीब आठ बजे रात को पहुंचे। अलवर में वहां एक किराये के मकान में ले गया।

रात को वहां कमरे में किराये के मकान में रहे। उसने रात को कुछ नहीं किया। वह फर्श पर सोया था। मैं उसे भाई की तरह मानती थी इसलिए उसके साथ चली गई ..."

5. It appears from the record that the learned trial court did not complete the examination of the prosecutrix but deferred it. She was thereafter subjected to cross examination after four months and in the cross examination she made all sorts of allegations against the appellant.

6. Section 138 of the Evidence Act provides that a witness is first examined by the party calling him. This is known `examination in chief' or direct examination. The adverse party has then the right to examine the witness. This called `cross-examination'. Section 154 however gives power to the court to permit the person who calls a witness to put any question to him which might be put n cross examination by the adverse party.

7. In the instant case where the prosecutrix did not support the charge of rape in her examination in chief, the trial court could exercise its discretion under section 154 of the Evidence Act, but it had no discretion to defer the cross examination of the prosecutrix in order to grant opportunity to prosecution to tutor her.

8. Having closely considered the testimony of prosecutrix and the statement of Dr.Kusum Lata (Pw.9) I am of the view that charge under section 376 IPC could not be established against the appellant. The prosecutrix was examined by Dr.Kusum Lata on August 19, 2002 and no injury was found on her genitals.

9. Since the age of prosecutrix on the date of incident was below 15 years and she was removed from the lawful custody of her father by the appellant, charges under sections 363 and 366 IPC are found proved.

10. For these reasons, I partly allow the appeal. While acquitting the appellant of the charge under section 376 IPC, I maintain his conviction and sentence under sections 363 and 366 IPC. Since the appellant Banti @ Vikki @ Sultan has already suffered confinement for a period of more than four years, I direct to set him at liberty forthwith, if he is not required to be detained in any other case.

The impugned judgment of learned trial court stands modified as indicated above.

(Shiv Kumar Sharma)J.

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